

**PATENT APPLICATION**  
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

First Applicant: AGEJAS-CHICHARRO, F.      Group Art Unit: 1625  
Serial No.: 10/598,512      Examiner: REESE, Heidi L.  
  
Filing Date: September 1, 2006      Conf No.: 6672  
For: Pyridyl derivatives and their use as mGlu5 antagonists  
  
Docket No.: X16538

**Request for Reconsideration of Patent Term Adjustment Determination under 37 CFR**  
**1.705**

Mail Stop Patent Term Adjustment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Issue Notification dated March 9, 2011 for the above-identified patent application, Applicants believe the Patent Term Adjustment (PTA) provided in the notification and subsequently listed on the front page of the corresponding patent, US 7915424, is incorrect. As such, Applicants request reconsideration of PTA under 37 CFR 1.705.

Applicants assert the correct PTA is 870 days. Applicants accept 325 days for 'A' delay under 37 CFR 1.702(a)(1)-(2), and 331 days for 'B' delay under 37 CFR 1.702(b). However, Applicant's respectfully disagree with 0 days for 'C' delay and assert this value should be 221 days under 37 CFR 1.702(e).

Correct Patent Term Adjustment

Filing or 371(c) Date:	09-01-2006	Overlapping Days Between {A and B} or {A and C}:	7
Issue Date of Patent:	03-29-2011	Non-Overlapping USPTO Delays:	870
A Delays:	325	PTO Manual Adjustments:	0
B Delays:	331	Applicant Delays:	0
<b>C Delays:</b>	<b>221</b>	<b>Total PTA Adjustments:</b>	<b>870</b>

What is implied in the current rules is explicit in the proposed rules. 37 CFR 1.702(e) indicates that a patent is entitled to patent term adjustment if the issuance of the patent was delayed by successful appellate review. Successful appellate review refers to a decision in the review reversing an adverse determination of patentability. Applicants assert 37 CFR 1.702(e) implies review of the Appeal Brief by the Office which results in reversing an Examiners rejection is a successful appellate review and, thus, entitled to PTA. This is made explicit in the proposed rules. See *Revisions of the Patent Term Extension and Patent Term Adjustment Provisions Relating to Decisions During Appellate Review*, 76 FR 18991.

Thus, under current Office practice, the process for seeking appellate review by the BPAI involves at least one decision in the review before the application forwarded to the BPAI, and a decision in these pre-BPAI reviews may result in the reopening of prosecution and issuance of an Office action or notice of allowance.

Section 1.702(e) is proposed to be amended to take into account the situation in which the Office reopens prosecution after a timely notice of appeal has been filed but before any decision by the BPAI and issues an Office action under 35 U.S.C. 132 (i.e., a new non-final or final Office action) or notice of allowance under 35 U.S.C. 151.

Upon the Office's review of the Appeal Brief, the adverse opinion to patentability was reversed. Applicants sought to appeal the Examiner's final rejection dated January 19, 2010 by filing a Notice of Appeal on April 22, 2010. Applicants filed an Appeal Brief along with a request and fee for a 1 month extension on July 22, 2010. On November 29, 2011, Applicants received a Notice of Allowance in which the Examiner stated "The rejection under 35 U.S.C. 103(a) ... is withdrawn as a result of Applicants' arguments in the Appeal Brief filed July 22, 2010". The period in days from filing the Notice of Appeal to mailing of the Notice of Allowance is 221. Applicants assert 221 days is the correct value for C delay.

The relevant dates as specified in 1.703(a), (b) and (c) for which an adjustment is sought are provided below.

No.	Description	Date	Start	'A' Days	'B' Days	'C' Days
1	371 Completion Date	09/22/2006				
2	14 month	11/22/2007				
3	Mail Restriction Requirement	10/01/2008	2	314		
4	Response after Non-Final Action	02/26/2009				
5	Mail Non-Final Rejection	06/30/2009	4	4		
6	3 year	09/22/2009				
7	Final Rejection	01/19/2010				
8	Notice of Appeal Filed	04/22/2010				
9	1 Month Extension Granted	07/22/2010				
10	Appeal Brief Filed	07/22/2010				
11	Notice of Allowance Mailed	11/29/2010	10	7		221
12	Patent Issue Date	03/29/2011	6		331	

This patent is not subject to a terminal disclaimer.

Applicants are not aware of circumstances constituting a failure to engage in reasonable efforts conclude processing or examination during prosecution of the application.

Respectfully submitted,

/Mark A. Winter/

Mark A. Winter  
Agent for Applicants  
Registration No. 53,782  
Phone: 317-276-5362

Eli Lilly and Company  
Patent Division  
P.O. Box 6288  
Indianapolis, Indiana 46206-6288

May 31, 2011

---